

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

*The County of Summit, Ohio, et al. v. Purdue
Pharma L.P., et al.*
Case No. 18-op-45090

and

*The County of Cuyahoga v. Purdue Pharma
L.P., et al.*
Case No. 1:18-op-45004

**MDL No. 2804
Case No. 17-md-2804
Hon. Judge Dan A. Polster**

**CERTAIN DEFENDANTS' AFFIRMATIVE DEPOSITION DESIGNATIONS AND
PARTIAL RESPONSE TO PLAINTIFFS' WITNESS LIST OBJECTIONS**

Pursuant to the Civil Jury Trial Order, ECF No. 1598, entered in *In re National Prescription Opiate Litigation* (MDL No. 2804) on May 1, 2019 (as amended in Judge Polster's July 29, 2019 order), as well as agreement among the parties, Certain Defendants¹ submit the following Affirmative Deposition Designations, as well as the following partial Response to Plaintiffs' Objection to Defendants' Witness List (ECF No. 2749).

I. Deposition Designations

The above-stated Defendants hereby serve Affirmative Designations for the following witnesses (*see* Exhibit A):

1. Fred Bencivengo

¹ The Defendants are AmerisourceBergen Drug Corp., Cardinal Health, Inc., McKesson Corporation, Walgreen Co., and Henry Schein, Inc.

2. Demir Bingol
3. Ronald Jackson
4. Linda Kitlinski
5. Kirstin Vitanza-Squires
6. Paul Coplan
7. Philip Cramer
8. Richard Fanelli
9. David Haddox
10. Amanda Hogan
11. Robert Kaiko
12. Gertrude Kass
13. Janet Koch
14. Donald Kyle
15. Maurice Mulcahy
16. Alan Must
17. Kathe Sackler
18. Richard Sackler
19. Lee Ann Storey
20. Curtis Wright

These Defendants reserve all rights, including all rights to revise or withdraw designations. Defendants further reserve the right to revise or withdraw these designations based on the Court's rulings, Plaintiffs' and other individual Defendants' designations of deposition testimony, and evidence introduced at trial.

These Defendants also reserve the right to play, in response to deposition testimony played by Plaintiffs or other individual Defendants, any testimony Plaintiffs or other Defendants have designated. By submitting these designations, Defendants do not waive any objections to the use of testimony and/or exhibits or their subject matter. Defendants' inclusion of any testimony and/or exhibits within these designations should not be construed as an admission that such testimony and/or exhibit is admissible if offered by Plaintiffs or another Defendant.

II. Response to Plaintiffs' Witness List Objections²

On October 8, 2019 (after the deadline to do so), Plaintiffs objected to various witnesses on Defendants' witness lists. As relevant here, Plaintiffs objected to five fact witnesses (Victor Borelli, Amanda Hogan, David Haddox, Richard Sackler, and Gertrude Kass) and three expert witnesses (Anna Lembke, David Kessler, and Meredith Rosenthal) on the basis that they "did not appear on Defendants' initial witness lists." ECF No. 2749 at 5-6. Plaintiffs maintained that Defendants "made their witness elections on September 11, 2019, when the parties served their original lists" and cannot now add witnesses. *Id.* at 6.

Of course, that ignores the drastic changes in this case which have occurred since September 11. The witnesses above are all Purdue and Mallinckrodt fact witnesses or experts who have offered opinions relevant to manufacturers. As of September 11, 2019, both Purdue and Mallinckrodt remained in the case. Purdue was severed due to settlement on September 16, 2019 (ECF No. 2612), and Mallinckrodt was dismissed after settlement on October 1, 2019. (ECF No. 2694) – both after Defendants tendered their initial list.

Plaintiffs and Defendants contemplated that witness lists would change based on settling Defendants. To that end, the parties negotiated an agreed schedule for submitting deposition

² This filing relates only to Section V.B. of Plaintiffs' Objections. Other filings will address the remaining sections.

designations of fact witnesses for settled Defendants. *See* Exhibit B (September 5, 2019 Conroy email to Swift). Defendants met that schedule for all of the above-stated Purdue fact witnesses (Amanda Hogan, David Haddox, Richard Sackler, and Gertrude Kass), and will meet that schedule for the remaining Mallinckrodt fact witness (Victor Borelli).

Nor can Plaintiffs claim ignorance of these witnesses. Five of the eight witnesses listed above (David Haddox and Richard Sackler, in addition to Anna Lembke, David Kessler, and Meredith Rosenthal) were on Plaintiffs' own witness lists through September 17. *See, e.g.*, Exhibit C.³ And the three expert witnesses (Anna Lembke, David Kessler, and Meredith Rosenthal) remain on Plaintiffs' witness list today. *See* Exhibit E.

In short, the parties contemplated that witness lists would change based on settling Defendants and negotiated an agreed schedule for that purpose. There is no dispute that Defendants met (or will meet) the agreed schedule. Plaintiffs have been on notice of these witnesses since the beginning of the case. Moreover, Defendants explicitly reserved all rights to "supplement and/or to amend their lists with any witnesses identified on any party's witness lists, including any party who later settles or is severed or dismissed" which they did at the first available opportunity. *See* Exhibit F (Defendants' September 11, 2019 Joint Witness List). Distributors' Joint Witness List is proper.

³ David Haddox also appeared on Purdue's witness list served September 11, 2019 along with several of the other witnesses above for which Defendants have submitted deposition designations. *See* Exhibit D.

Dated: October 10, 2019

Respectfully submitted,

/s/ Kaspar J. Stoffelmayr

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CERTIFICATE OF SERVICE

I, Kaspar J. Stoffelmayr, hereby certify that on this 10th day of October, 2019, the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Kaspar J. Stoffelmayr
Kaspar J. Stoffelmayr

Attorney for Walgreen Co.